IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WA.No. 815 of 2006(B)

AGAINST THE JUDGEMENT IN WPC.27679/2005 Dated 06/04/2006
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APPELLANT: 2ND RESPONDENT IN WPC.

A.K.NARAYANAN, CHIEF FOOD INSPECTOR,
MOBILE VIGILANCE SQUAD, KOZHIKODE.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: RESPONDENTS.
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1. REJI C.GEORGE, DISTRICT FOOD INSPECTOR,
WAYANAD.

2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

3. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE
DEPARTMENT, THIRUVANANTHAPURAM.

ADDL.R4. V.N. ASHOKAN, FOOD INSPECTOR,
CHALAKUDI CIRCLE,
HOUSE NO. VI/146-A, CHERANALLOOR
COCHIN 682 034.

ADDL.R5. GEORGE VARGHESE K.M.
FOOD INSPECTOR,
PALAKKAD CIRCLE,
KAKKATTIL HOUSE
POOVANCHIRA P.O., THRISSUR.

ADDL.R6.P. RADHAKRISHNAN, FOOD INSPECTOR,
CHERTHALA CIRCLE,
SARASRUHAM, RAJESH LANE,
KOMANA, AMBALAPPUZHA.

ADDL.R7.R.S. SATHEESH KUMAR, FOOD INSPECTOR,
MAVELIKKARACIRCLE,
VAISHNAVAM, THENGUNATTAVILA,
KADACHALKURI, BALARAMAPURAM,
TRIVANDRUM.

ADDL.R8.C.P. RAMACHANDRAN, FOOD INSPECTOR,
KANJAKAD CIRCLE, PRASANTH NILAYAM,
EASWARAMANGALAM P.O. PONNANI,
MALAPPURAM DIST.
ADDITIONAL RESPONDENTS 4 TO 8 ARE IMPLEADED VIDE ORDER DATED 29-5-2006 IN IA 609/06.
R2 & 3 BY GOVT. PLEADER MR. BENNY GERVACIS

BY ADV. SRI.T.A.SHAJI
SMT.T.V.NEEMA
SRI.RAGAM S.MOHAN
GOVERNMENT PLEADER
SRI.PREMJIT NAGENDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25/01/2007, ALONG WITH WA NO. 1312 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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W.A.NOS.815 & 1312 OF 2006

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DATED THIS THE 25th DAY OF JANUARY 2007

JUDGMENT

Abdul Gafoor,J.

The Government as well as the second respondent in the writ petition are aggrieved by the judgment in W.P.(C) 27679/2005 whereby Ext.P7 has been quashed directing the Government to consider the matter again. The fact position of the case is as follows:

2. The writ petitioner Regi.C.George was a Food Inspector. He was promoted to the post of Chief Food Inspector and he is occupying the promotion post since 27-5-2000, though there is allegation that he was occupying that post on officiation even earlier. While posting him as Chief Food Inspector, his junior was posted as District Food Inspector, the category to be filled up by transfer of the incumbents working in the category of the

Chief Food Inspector. The appointment by transfer is regulated by Rule 28(b) of the Kerala State & Subordinate Service Rules. Necessarily the incumbent to be posted by transfer shall be suitable senior most incumbents in the category of Chief Food Inspector. Therefore, the Government found it erroneous to retain Regi.C.George as Chief Food Inspector and his junior as District Food Inspector and accordingly rectified that error by posting Regi.C.George as District Food Inspector. According to him, he had already relinquished the posting as District Food Inspector. But this was disputed by the Government stating that there was no relinquishment letter in advance before such posting. Anyhow he approached this Court aggrieved by his posting as District Food Inspector. This Court directed consideration of the matter by the Government and the Government passed Ext.P5. The relinquishment was rejected. This was again challenged before this Court by filing a writ petition which resulted in Ext.P6 judgment wherein fresh consideration was directed. In Ext.P6 judgment it was directed as follows:

"In such circumstances, the writ petition is

disposed of with a direction to the first respondent to consider and pass orders on Exts.P13 and P14 in accordance with law. No doubt learned counsel for the petitioner referred to the provisions of Rule 38 of the K.S.& S.S.R., which provides that a relinquishment can be rejected only on the reasons of public interest. If the relinquishment given by the petitioner is accepted, then there will be a further direction that the petitioner shall be posted back as Chief Food Inspector, Mobile Vigilance Squad, Kozhikode and the second respondent shall be placed back as District Food Inspector, Wayanad. A decision in this regard shall be taken within a period of four weeks from the date of receipt of a copy of this judgment."

In Ext.P7 again the relinquishment has been rejected in the following lines:

"As per Rule 38 of the K.S.& S.S.R,.a relinquishment can be accepted only if it is not opposed to public interest. Order number referred to as fourth paper above

was issued to rectify the irregularities in order No.read as 1st paper above. It is done on public interest. Sri.Regi.C.George had accepted the grade promotion in the post of Food Inspector on condition that he will not relinquish promotion in the normal line as per the condition for giving grade promotion. Hence the relinquishment request of Sri. Regi.C.George is rejected and the status quo as ordered in Order No.EG1-24854/05/DHS dated 20-05-2005 is maintained."

This was challenged in W.P.(C)No.27679/2005 by Regi.C.George again contending that the rejection of the relinquishment is not in public interest as required in Rule 38 of the General Rules in K.S.& S.S.R., but because of the fact that he had obtained grade promotion while working as Food Inspector with the condition that he will not relinquish regular promotions. According to him, further promotion was to the post of Chief Food Inspector which he accepted. The post of District Food Inspector is yet another category, though on the same scale of pay to be filled by appointment on transfer from Chief Food Inspector. Therefore,

that cannot be a reason to reject the relinquishment.

3. The portion extracted in Ext.P7 impugned order as above does not spell out the germane consideration in terms of Rule 38 of the General Rules as to whether it was in public interest. Consideration of public interest in a posting like this shall reflect the following aspects generally.

a) whether experience in working as Chief Food Inspector is essential for being posted as District Food Inspector for efficient and effective administration of the department and whether that will have to be the prime most consideration of public interest.?

b) Continuance of an incumbent in the post for long as Chief Food Inspector will be conducive to public interest.

c)Whether the relinquishment of the post of District Food Inspector by one incumbent resulting in another being retained as District Food Inspector is conducive to public interest.

4. Other aspects also may arise in public interest. Nothing of that sort is reflected in Ext.P7. In such circumstances, it is only appropriate that the Government shall consider all the above aspects and any further aspect germane to public interest

and pass fresh orders within two months from the date of receipt of a copy of this judgment.

Pending consideration by the Government, status quo as on today with respect to the parties in the Writ appeal shall be maintained. The posting of incumbents shall also be based on the norms. The writ appeal is disposed of accordingly.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

ks.